

Comments on Model Procurement Code

Iowa Department of Transportation

October 26, 2005

Background

The Model Procurement Code (MPC) is a guide for writing procurement rules and policy. Where none exists, it would be a useful tool to help a government agency write its procurement policy and rules. It includes elements such as construction, ethics, general statements of purpose and a variety of definitions that are already established in the *Code of Iowa*. It applies to the entirety of state law, not just the procurement statutes. Restating these elements within a procurement code would be, at best, redundant. At worst, serious confusion and possible litigation could result from minor differences in wording and definitions.

The actual purchasing process as currently carried out by state agencies is not appreciably different from that which would result under the Model Procurement Code. Every article of the MPC is addressed in the current *Code of Iowa* and Iowa Administrative Code (administrative rules). Issues affecting vendors are stated in the terms and conditions of bid documents and contracts. Safeguards to insure maximum competition and fair, ethical and defensible purchasing standards are in place and are not appreciably different from the Model Procurement Code.

Department of Transportation Comments

While enacting the Model Procurement Code would have little impact on Iowa's purchasing process, it differs significantly from current law and rules in the amount of bureaucracy, the level of detail in statute, and the degree to which the purchasing process is centralized. The Department of Transportation (DOT) has concerns about potentially negative results of a complete rewrite of purchasing regulation when no advantages or procedural improvements are clear. The following issues are identified for consideration:

1. *In the case of DOT, adopting the MPC would add significantly to the bureaucratic structure involved.* The MPC establishes a Chief Procurement Officer and suggests the creation of a Procurement Policy Office with "cabinet level" officials. This Officer, and possibly Office, would have jurisdiction over DOT purchasing activity, a major change from the DOT's current independent purchasing authority. Additional bureaucracy would add time and complexity to the purchasing process without providing significant benefit to either the state or vendor community.
2. *The MPC differs from current Iowa law in its basic philosophy of legislation.* If the Model Procurement Code were adopted as statute, it would be significantly more detailed and procedurally oriented than most of the *Code of Iowa*. General policy and legislative intent is usually adopted in the *Code of Iowa*. Details that define the actual procedures to be followed are stated in administrative rules. This allows for easier amendment to address minor issues of interpretation and the changes in process which invariably result from technological advancement.

The 2000 revision of the Model Procurement Code is illustrative of this concern. A complete revision was needed to cover issues such as electronic bidding. Had Iowa previously adopted the Model Procurement Code, a lengthy and time-consuming process would have been necessary to modernize the procurement statutes. In the current situation, general legislation allowing and encouraging electronic government was all that was needed to accommodate these changes. Purchasing authorities were able to change their administrative rules to accommodate the changes that the electronic age brought to the purchasing process.

3. *In the past, public purchasing has sometimes been used as an avenue to promote various public policies or goals.* The MPC, however, is written from a professional purchasing point of view. It establishes procedures and methods but does not foster purchasing policies designed to advance the public agenda. For instance, the MPC is not designed to encourage the purchase of American products, Iowa products or products from targeted small businesses or small businesses in general. Promoting energy conservation and use of recycled products through purchasing policy is not covered by the MPC. All of these policies are currently embodied in Iowa's procurement law, as established in the *Code of Iowa*.
4. *The MPC would potentially conflict with federal requirements and mandates involved with the highway construction program.* While the MPC includes an option to exempt highway construction, it does not offer the same exemption for the professional services associated with highway construction. The DOT has established procedures for contracting for engineering, architectural and related technical services. These procedures were developed under a partnership with the Federal Highway Administration (FHWA), professional organizations that provide these services, and the highway construction industry. These procedures have been approved by the FHWA and changes to the process would be subject to FHWA approval.

State government in Iowa has well established and time-tested procurement rules for the Department of Administrative Services, Board of Regents, the Department of Transportation, and other agencies. This results in terms and conditions that rarely change and are understood by the vendor community.

Since the MPC would not appreciably change the actual purchasing processes in use in Iowa, the amount of legislation, interpretation, additional bureaucracy and confusion that could result from such a change in the *Code of Iowa* does not seem to be in the best interest of the state. A more productive approach would be to identify the overarching concerns about the current purchasing process in a collaborative discussion. This approach would assure that the Legislature's concerns with the existing process are addressed, rather than lost in a discussion focused on the potential adoption of extensive new legislation.